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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/402,472	11/30/1999	DANIEL CELERIER	0143-0473-6-PCT	5980

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EXAMINER

JIMENEZ, MARC QUEMUEL

ART UNIT PAPER NUMBER

3726

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/402,472

Applicant(s)

CELERIER ET AL. 

Examiner

Marc Jimenez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-11,13-16,18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-11,13-16,18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 12/2/02 has been entered.

Declaration Under 37 C.F.R. 1.132

2. The declaration under 37 CFR 1.132 filed 12/2/02 is insufficient to overcome the rejection of **Claims 8-11, 13-16, 18, and 19** based upon the rejections under 35 U.S.C. 103(a) as set forth in the last Office action because:

The declaration relies primarily on the opinion that the formation of a flow drilled hole and the mounting of a sensor therein in an exhaust device for an internal combustion engine satisfied a "long-felt and unsatisfied need" in the engine exhaust system art as evidenced by the generalization of the new method on the whole range of Renault engines. However, establishing long-felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. The need must have been a persistent one that was recognized by those of ordinary skill in the art. See MPEP 716.04 regarding long-felt need and failure of others. The alleged problem in the instant case was first recognized by the current

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applicants and there is no evidence that the need was persistent and was recognized by those of ordinary skill in the art. Therefore, there is no evidence of long felt need in the art. Note that it was held that "Since the alleged problem in this case was first recognized by the current appellants, and others apparently have not yet become aware of its existence, it goes without saying that there could not possibly be any evidence of either a long felt need in the... art for a solution to a problem of dubious existence or failure of others skilled in the art who unsuccessfully attempted to solve a problem of which they were not aware." *Orthopedic Equipment Co., Inc. v. All Orthopedic Appliances, Inc.*, 707 F.2D 1376, 217 USPQ 1281 (Fed. Cir. 1983). Therefore, applicant has not shown evidence of long felt need.

3. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Feher (3,429,171).

Reed teaches the invention cited above with the exception of having a bush with an interior portion that extends further than the exterior portion.

Feher teaches a bush **78** having an interior portion **82** extending further than the exterior portion **102**.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Reed with a bush with an interior portion that extends further than the exterior portion, in light of the teachings of Feher, in order to provide a stronger structural support for the measuring transducer.

6. **Claims 9-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Feher as applied to **Claims 8** above, and further in view of [AAPA].

Reed/Feher teach the invention cited above with the exception of the pipe element having a thickness between 1mm and 3mm and the pipe being made of stainless steel alloy.

[AAPA] teaches that current exhaust pipes are between 1.5 and 2mm (page 2, line 4).

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Reed/Feher with a pipe element that is between 1-3mm thick, in light of the teachings of [AAPA], in order to provide a pipe that is uniformly strong.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Reed/Feher/[AAPA] with a pipe of stainless metal alloy, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. **Claims 13, 14, 16, 18, and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Feher and Olson.

Reed teaches the invention cited above with the exception of having a bush with an interior portion that extends further than the exterior portion and forming the bush with a flow-drilling operation.

Feher teaches a bush **78** having an interior portion **82** extending further than the exterior portion **102**.

Olson teaches a flow-drilling operation (fig. 4 and 5) to form a bush **18**.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Reed with a bush with an interior portion that extends further than the exterior portion, in light of the teachings of Feher, in order to provide a stronger structural support for the measuring transducer.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Reed/Feher with a flow-drilling operation to form the bush, in light of the teachings of Olson, in order to utilize a process wherein a smooth, symmetrical bush is formed.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Reed/Feher/Olson with a pipe of stainless metal alloy, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Official notice is taken that it is well known in the art to use tool speeds greater than 500rpms.

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8. **Claims 15** is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Feher and Olson as applied to **Claim 13** above, and further in view of [AAPA].

Reed/Feher/Olson teach the invention cited above with the exception of the pipe element having a thickness between 1mm and 3mm and the pipe being made of stainless steel alloy.

[AAPA] teaches that current exhaust pipes are between 1.5 and 2mm (page 2, line 4).

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Reed/Feher/Olson with a pipe element that is between 1-3mm thick, in light of the teachings of [AAPA], in order to provide a pipe that is uniformly strong.

Conclusion

9. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Interviews After Final

10. Applicant note that an interview after a final rejection will not be granted unless the intended purpose and content of the interview is presented briefly, in writing (the agenda of the interview must be in writing) to clarify issues for appeal requiring only nominal further consideration. Interviews merely to restate arguments of record or to discuss new limitations will be denied. See MPEP 714.13 and 713.09.

Contact Information

11. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information. M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer

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Service at (703) 306-5648, or fax (703) 872-9301 or by email to

CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number is **703-306-5965**. The examiner can normally be reached on **Monday-Thursday and the second Friday of the bi-week, between 9am-6pm.**

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 308-6789 or (888) 786-0101
Assignment Branch	(703) 308-9723
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Petitions/Special Programs	(703) 305-9285
Terminal Disclaimers	(703) 305-8408
PCT Help Desk	(703) 305-3257

If the information desired is not provided above, or a number has been changed, please call the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/


MJ
January 15, 2003


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